

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

AMAZIN' RAISINS INTERNATIONAL, INC.,

Plaintiff,

v.

OCEAN SPRAY CRANBERRIES, INC.,

Defendant.

Civil Action No. 1:04-cv-12679-MLW

**DECLARATION OF MICHAEL SCOTT IN SUPPORT OF OCEAN SPRAY'S MOTION
FOR SUMMARY JUDGMENT OF NONINFRINGEMENT**

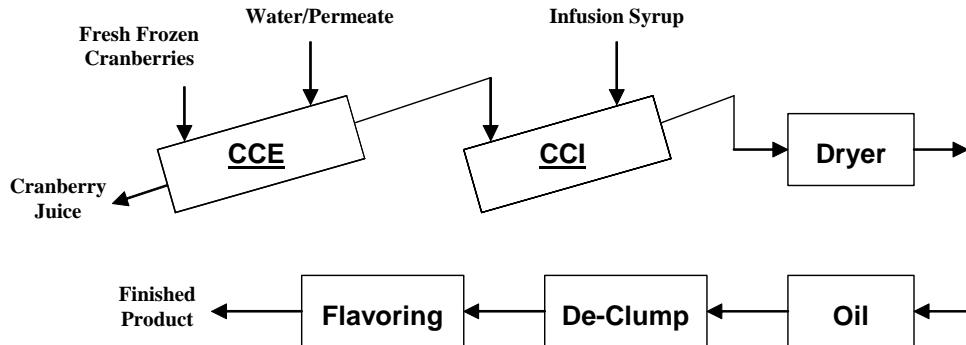
I, Michael A. Scott, declare as follows:

1. I am the Senior Operations Manager at Ocean Spray Cranberries, Inc.'s Tomah manufacturing facility. I have worked at Ocean Spray since approximately 1979 and have held my current position since 1993. One of my responsibilities as Senior Operations Manager involves the management of the process used to make Ocean Spray's sweetened dried cranberries. I have personal knowledge of the facts stated in this declaration and, if called upon, could testify thereto.

2. I understand that Plaintiff has accused the following products and the process that makes those products of infringement: Craisins® Cherry Flavor Sweetened Dried Cranberries, Craisins® Orange Flavor Sweetened Dried Cranberries, Craisins® Strawberry Flavor Sweetened Dried Cranberries, Blueberry Flavored Fruit Pieces (UPC 94572), Blueberry Diced Flavored Fruit Pieces (UPC 94592), Cherry Flavored Fruit Pieces (UPC 94591), Cherry Diced Flavored Fruit Pieces (UPC 94593), Raspberry Flavored Fruit Pieces (UPC 94574), Raspberry Diced Flavored Fruit Pieces (UPC 94594), Strawberry Flavored Fruit Pieces (UPC 94576), Strawberry Diced Flavored Fruit Pieces (UPC 94596), Orange Flavored Fruit Pieces (UPC 94582), Mixed

Berry Diced Flavored Fruit Pieces (UPC 94623), and any of these products sold in various states of moisture, physical character, or in glycerated form. I have personal knowledge of these products and the process used to make these products.

3. The following diagram provides a true and accurate description of Ocean Spray's manufacturing process at its Tomah facility:



4. The manufacture of the accused products listed above begins with frozen cranberries. The frozen cranberries are broken apart and go through a sorting and screening process. Once the screening process is complete, the frozen cranberries are sliced into seven or eight millimeter pieces. Next, the frozen cranberry pieces are defrosted with cranberry juice that has been heated to approximately 125 degrees Fahrenheit. A photograph of the defrosted fruit is attached hereto as Exhibit A. These steps are the same for all products made at the Tomah facility.

5. The defrosted cranberry pieces fall into the countercurrent extractor ("CCE") so that a desired amount of cranberry juice may be extracted from the pieces. The CCE and the extraction process is the same for all of the accused products. The CCE has a trough-shaped housing that is slightly inclined. The cranberries are placed into the low end, or bottom, of the CCE and pure water or permeate is placed at the top end, as shown in the diagram above. Permeate is water extracted from the cranberry juice that is generated by the countercurrent

extraction process. Ocean Spray does not add an acidulant to the water or permeate used in the CCE juice extraction process. The photograph attached as Exhibit B shows the pieces entering the bottom of the CCE and the Exhibit C photograph shows how the water or permeate enter the top of the CCE.

6. The CCE has a helical screw conveyor that runs its entire length and forces the cranberry pieces up the incline of the CCE against the water or permeate that flows down to the low end of the CCE. This process removes a desired amount of cranberry juice from the pieces by osmosis. Typically, cranberries have a brix level that ranges from approximately 8.0 to 9.0 and an average acid content of approximately 2.4%. After the extraction process, the cranberry pieces have a brix level of approximately 0.54 and an average acid content of roughly 0.25%. The moisture content of the cranberry pieces remains roughly the same throughout the extraction process at approximately 90%.

7. Ideally, the Tomah facility would use only well water in the extraction process because it provides the greatest amount juice extraction from the cranberry pieces. However, because the Tomah facility can only expel a small amount of waste water each day, cranberry juice permeate is also used in the extraction process. The permeate used in the process is the water byproduct created when the juice extracted from the cranberry pieces in the CCE is concentrated by reverse osmosis. Because the reverse osmosis system is not perfect, the permeate will contain a small amount of cranberry juice. This small amount of cranberry juice can hinder the removal of the fruit solids from the cranberry pieces during extraction.

8. At the request of counsel for Plaintiff, I recovered a sample of the defrosted cranberry pieces just as they entered the CCE and a sample of the pieces as they exited the CCE. I collected these samples using a perforated scoop, and then drained and shook off all of the

water and juice from the pieces before placing them into bags. At the request of Plaintiff's counsel, I attempted to vacuum seal the contents of the bags. However, even after draining off all of the surface water and juice, I was unable to seal the bags due to the large amount of juice remaining in the pieces. In fact, I ruined two vacuum sealers trying to seal the bags. Attached as Exhibits D and E are true and correct photographs of the samples taken and provided to Plaintiff's counsel. The liquid visible in the photographs is cranberry juice from the wet pieces.

9. When the cranberry pieces emerge from the CCE, they are placed in the countercurrent infuser ("CCI"). Like the CCE, the CCI has a trough-shaped housing that is slightly inclined with a helical screw conveyor running its length. The decharacterized cranberries from the CCE are placed into the bottom of the CCI and an infusion syrup is placed into the top as shown in the diagram above. The photograph attached as Exhibit F shows the pieces entering the bottom of the CCI and the Exhibit G photograph shows the infusion syrup entering the top of the CCI.

10. The formulation of the infusion syrup added to the CCI will vary depending upon the product being made. To my knowledge, all of the infusion syrups used for the accused products listed above contain citric acid, with the exception of the syrups for the blueberry products. I understand that the citric acid is added to the infusion syrup to replace a portion of the acid removed by the CCE. As I stated previously, the pieces typically have an acid content of approximately 0.25% after the extraction process. The citric acid in the infusion syrups raises the acid content anywhere from 1.2% to 1.8%, depending on the product. Thus, the acid content of the final product is roughly half of a cranberry's original acid content.

11. The clumping of cranberry pieces is a significant problem associated with Ocean Spray's manufacturing process. The process of reducing the number of clumps in the product

begins immediately after the pieces exit the CCI. The pieces are sprayed with water to remove the infusion syrup on the outer surface of the pieces before they enter the drying process. A photograph of the sprayer is attached hereto as Exhibit H.

12. Ocean Spray uses a three-stage drying system. Between each drying stage, a rotating shaft with fingers runs through the cranberry pieces to break up as many clumps as possible. In addition, between the first and second drying stages and the second and third drying stages, transfer belts are sprayed with water to prevent the pieces from sticking to the belts as the pieces are moved to the next drying stage.

13. Because the pieces are still extremely sticky after the drying process, the pieces are sprayed with oil just as they exit the third drying stage. A photograph of the dryer exit and oil spray nozzle is attached hereto as Exhibit I. At this point in the process, the product is so sticky that when I grab a handful of pieces and push them together as shown in the photograph attached as Exhibit J, the pieces will remain in a lump. Shortly after the pieces exit the final drying stage and are sprayed with oil, they are passed through an oiling drum to ensure that a uniform coat of oil covers the outer surface of each piece. A photograph of the oiling drum is attached hereto as Exhibit M. Even after the oiling stage of the process, it is not uncommon for product to contain lumps ranging from the size shown in the Exhibit K photograph to that shown in the Exhibit L photograph. The clumps shown in Exhibits K and L were taken directly from the production line and were not altered in any way.

14. After the oiling stage, the pieces are moved over a vibrating shaker screen to size the finished pieces and to segregate clumps for further processing. The clumps are shown on the top of the shaker screen in the photographs attached hereto as Exhibits N and O. The clumps are

the processed by a de-clumping system and the individual pieces are placed back into the production stream.

15. After the oiling, de-clumping, and an additional sorting stage (not shown in the paragraph 3 diagram), a topical flavoring may be added to the fruit pieces. To my knowledge, a topical flavoring is added to all of the accused products listed above, with the exception of the blueberry flavored products. The topical flavoring is a crystalline substance that is sprinkled onto and sticks to the outer surface of the fruit pieces. When the flavor crystals are added, the pieces become even more difficult to handle.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: December 21, 2005

/s/Michael A. Scott
Michael A. Scott

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EXHIBIT A



EXHIBIT B



EXHIBIT C



EXHIBIT D



EXHIBIT E



EXHIBIT F



EXHIBIT G



EXHIBIT H



EXHIBIT I

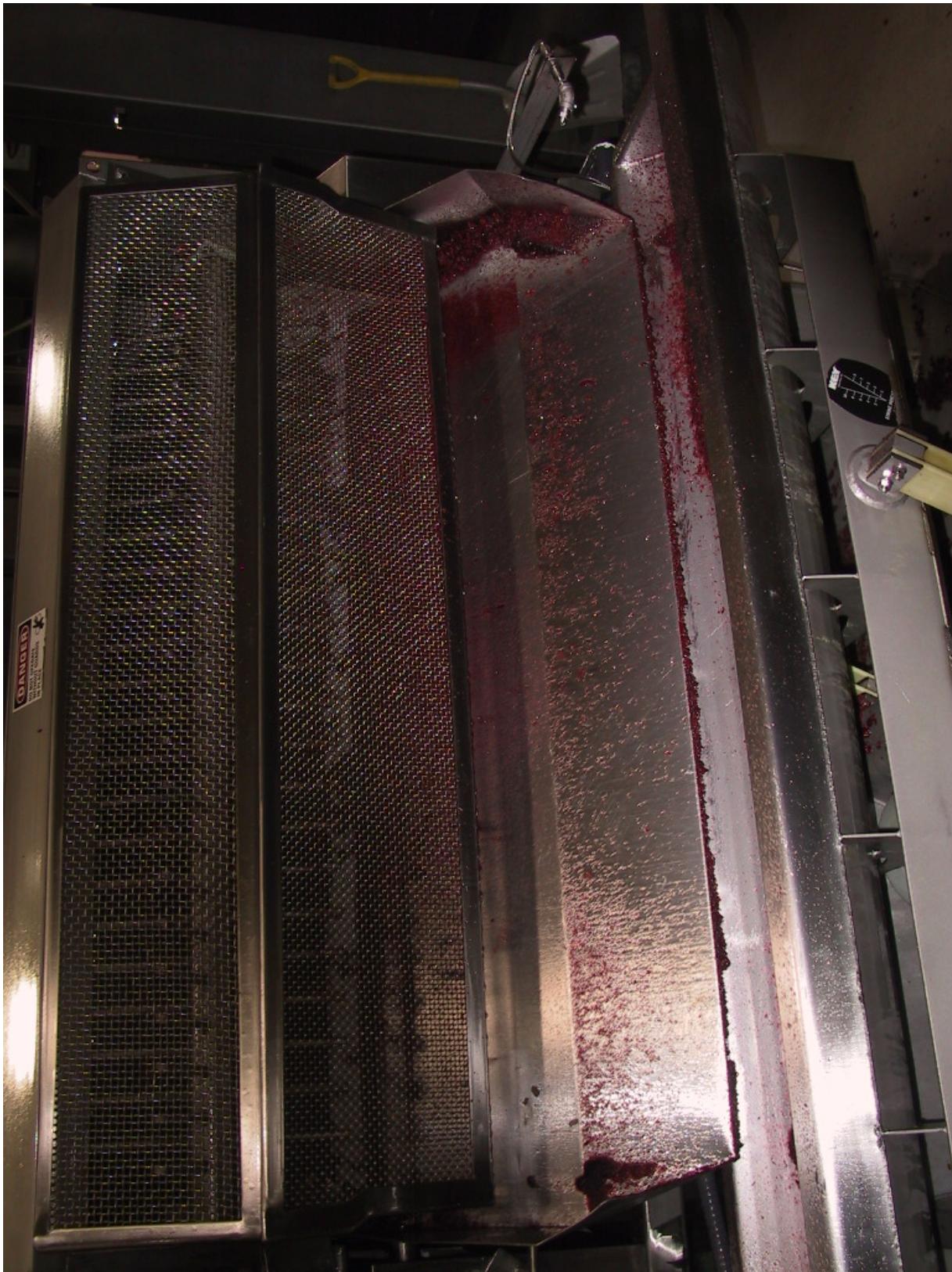


EXHIBIT J



EXHIBIT K



EXHIBIT L



EXHIBIT M



EXHIBIT N

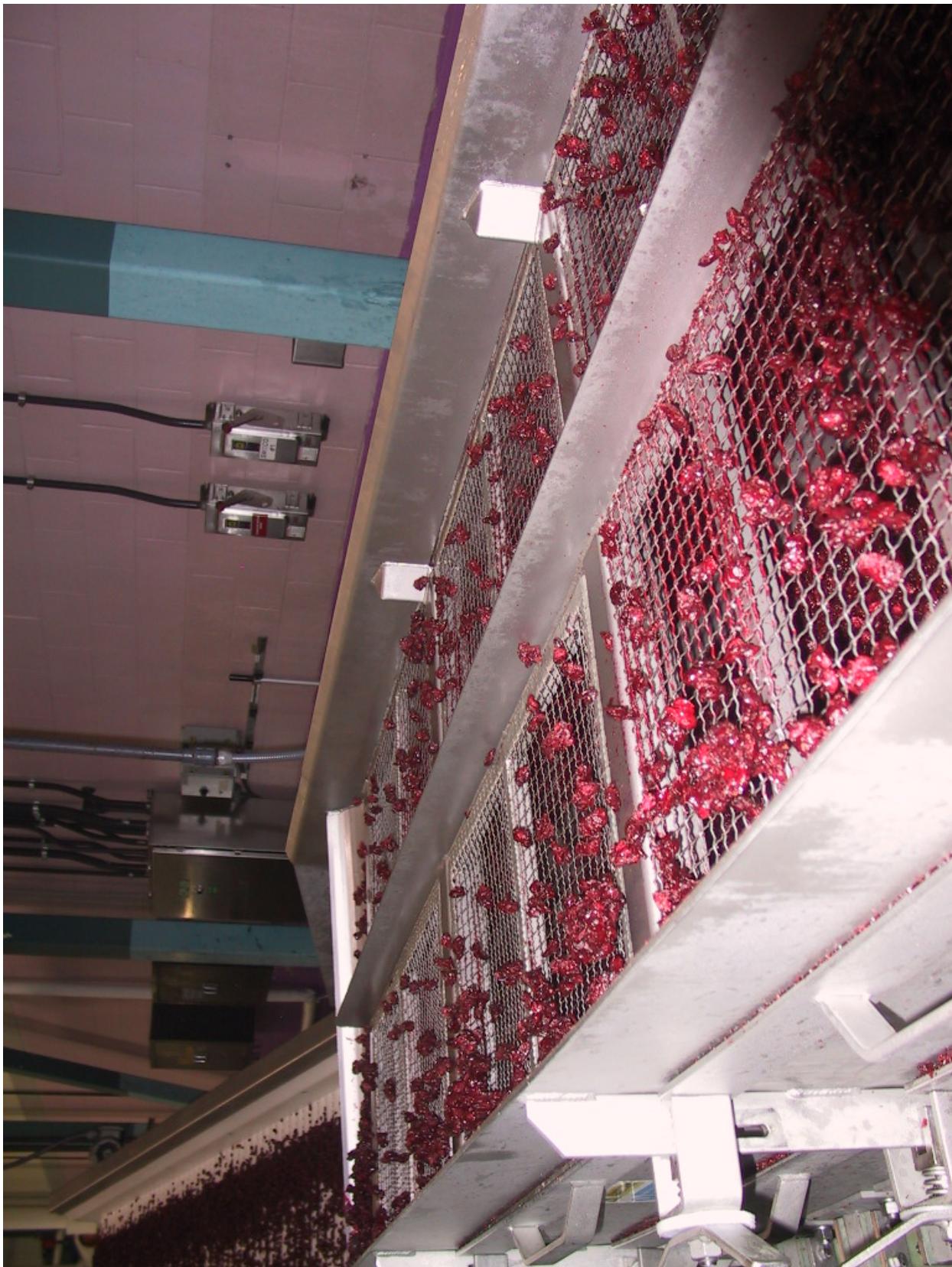


EXHIBIT O

